IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 17647 of 2004

Between:

Kethineni Vasantha Rao, S/o Rama Raju,
R/o Kothapalem, Evuruvaripalem, Chilakaluripet Mandal, Guntur District

..... PETITIONER

AND

1 The Divisional Engineer, Assessments, A.P.S.P.D.C.L.,
Vijayawada, Krishna District
2 The Assistant Divisional Engineer, Operation, A.P.S.P.D.C.L., Chilakaluripet,
Guntur District

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or direction more particularly, one in the nature of Writ of Mandamus declaring the impugned notice of the 2nd respondent vide Lr.No.ADE/OSD/CPT/F.No.DKT/D.No.223/04, dated 17-09-2004, as illegal, arbitrary against the principal of natural justice and contrary to law and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

Counsel for the Petitioner:MR.VENKATESWARLU POSANI

Counsel for the Respondents: MR.KANAKAMEDALA RAVINDRA KUMAR

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.17647 OF 2004

ORAL ORDER :

This writ petition is filed seeking a declaration that the letter No.ADE/OSD/CPT/F.D.No.DKT/D.No.223/2004, dt.17-09-2004 issued by the 2nd respondent as arbitrary and illegal.

The petitioner claims to be in occupation of the premises situated at Kothapalem village (Evuruvarialem), Chilakaluripet Mandal, Guntur District and utilizing the Service Connection No.121 obtained under domestic category. The registered consumer of the service connection is one M.Hanumantha Rao. While so, the 2nd respondent issued the impugned letter dated 17-09-2004 stating that the premises in occupation of the petitioner was inspected by the officials of the respondent – Corporation on 15-09-2004 and during the course of inspection it was prima facie found that the petitioner is guilty of pilferage of energy. It is also stated that the 1st respondent will fix the assessment for loss sustained by the Corporation and the petitioner may make a representation to him raising objections if any within one month from the date of service of the notice. It is further stated that the value of the energy pilferaged by the petitioner is assessed at Rs.1,19,773-80 ps and that if he is desirous of power supply he shall pay a sum of Rs.59,886-90 ps being half of the above estimated amount. Aggrieved by the same, this writ petition is filed.

I have heard the learned Counsel for the petitioner and the learned Standing Counsel appearing for the respondents.

Learned Counsel for the petitioner contends that the assessment made by the respondent under the impugned letter is unsustainable in view of the provisions of the Electricity Act, 2003 (for short, 'the Act') which came into force with effect from 10-12-2003. He also contends that the impugned notice is not in consonance with the provisions of the Act and that the action of the respondents demanding 50% of the provisionally assessed amount is not contemplated under the said Act.

It is to be noted that a Division Bench of this Court in W.A.NOs.452 and 477 of 2004 while considering the scope of the provisions of the Electricity Act, 2003 held that under the Act, there is no power while issuing provisional assessment either to stop or disconnect the power supply or call upon the consumer to pay even part of the provisional assessment amount till the final assessment is made. Admittedly, the inspection in the present case was conducted after the commencement of the Act. Hence, in the light of the ratio laid down by the Division Bench in the above case, the impugned notice cannot be sustained.

In the result, the Writ Petition is disposed of by setting aside the impugned notice dated 17-09-2004 issued by the 2nd respondent. It is left open to the assessing authority to make a final assessment in respect of the Service Connection No.121 after giving an opportunity to the petitioner to submit his explanation. There shall be a direction to the respondents – Corporation not to disconnect the power supply to the said service connection till the final assessment is completed. No costs.

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30-09-2004

mjl

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To

1. The Divisional Engineer,
   Assessments, A.P.S.P.D.C.L.,
   Vijayawada, Krishna District.

2. The Assistant Divisional Engineer, Operation, APSPDCL,
   Chilakaluripet, Guntur District.
3. 2 CD copies.

30-09-2004

Note:

Issue wire at party's cost

B/o Mjl/*

Pl. return the bundle to the CM

Section after dispatch of the

Operative portion.

B/o Mjl